Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-5309

EDMUND MULCAHY,

Petitioner,

—*v.*—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The Onondaga County Court's memorandum of law, dated January 8, 1974, is not published. There was no opinion filed by the New York State Supreme Court, Appellate Division, Fourth Department when it unanimously affirmed the judgment of conviction (44 A.D.2d 911). The New York State Court of Appeals (Jasen, J.) denied leave to appeal on June 28, 1974.

JURISDICTION

The requisites for jurisdiction are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether or not the State courts properly held petitioner's confession voluntary?

2. Whether or not the petitioner's plea of guilty to the reduced charges was proper?

STATEMENT OF THE CASE

Petitioner and two co-defendants were indicted for CONSPIRACY IN THE SECOND DEGREE (2 Counts), CONSPIRACY IN THE FIRST DEGREE, BURGLARY IN THE FIRST DEGREE (2 Counts), ROBBERY IN THE FIRST DEGREE (2 Counts), MURDER (3 Counts), GRAND LARCENY IN THE THIRD DEGREE (2 Counts), and POSSESSION OF A WEAPON. The indictment concerned the slaying of one Leonard Morrison on March 12, 1973.

Pursuant to an oral motion, a Huntley hearing was held on May 25, 1973 [H-1], continued on June 15, 1973 [H-2], and terminated on October 24, 1973 [H-3] in Onondaga County Court (Gale, J.). On January 2, 1974, the petitioner's motion to suppress his confession was orally denied. By memorandum decision, dated January 8, 1974, the said motion was formally denied.

On January 4, 1974, several days after jury selection had commenced, petitioner pled guilty to the crimes of MANSLAUGHTER IN THE FIRST DEGREE and ROBBERY IN THE SECOND DEGREE in full satisfaction of the aforementioned indictment. Petitioner was subsequently sentenced to serve concurrent terms of imprisonment having a maximum of twenty years on each charge.

FACTS

At approximately 2:00 p. m. on March 15, 1973, petitioner was arrested by the New York State Police, near McGraw, New York, advised that he was a homicide

suspect and further advised of his constitutional rights (H-1, pp. 2-4, 9-10). Petitioner did not appear to be under the influence of any intoxicant (H-1, p. 7). After being transported to the State Police substation at Cortland, New York, petitioner was thereupon transported, at approximately 2:55 p. m., to the Syracuse New York Police Department and placed in their custody at approximately 3:30 p.m. (H-1, pp. 5-6).

Subsequent to the completion of the interrogation of a co-defendant at 5:45 p.m., Sergeant William Hunter of the Syracuse Police Department was then assigned to interrogate petitioner (H-1, p. 17). Hunter had been advised that petitioner had already been advised of his constitutional rights; the following initial and taped conversation then ensued (Transcript of Interrogation, pp. 2-3):

> HUNTER: . . . you don't have to talk to me . . .
> PETITIONER: No, I want to talk to you.
> HUNTER: You have been advised of your rights, right?
> PETITIONER: That's right.
> HUNTER: You know what your rights are... You know what your rights are and you were advised of them. Having been advised of them, will you talk to me without having an attorney here?
> PETITIONER: Will I talk to you?
> HUNTER: Will you talk to me, without having an attorney here?
> PETITIONER: Yes.
> HUNTER: You know what your rights are, - you don't have to.
> PETITIONER: Talk to you.
> HUNTER: You know that, right?
> PETITIONER: Well, I will talk to you.
> HUNTER: You can stop talking when you want to ...
> PETITIONER: Yes, sir.

The tenor and substance of the ensuing conversation between the two men was to the effect that: Hunter demanded that petitioner be truthful with him; Hunter never stated to petitioner that he would be released if he told his side of the story; and petitioner may be able to help himself (mitigate criminal responsibility) if he told his side of the story. However, nowhere does it appear that petitioner would be given assistance on a less serious charge if he were to tell his side of the story. Furthermore, nowhere does it appear that petitioner would be absolved from criminal responsibility if he told his version.

After petitioner confessed orally, Hunter then took his affidavit himself and finished at approximately 8:20 p.m. (H-1, pp. 24-25). Petitioner signed the affidavit after having read the constitutional warnings contained therein (H-1, pp. 25-26). The "constitutional rights" portion of the affidavit was signed prior to the typing of the body of the affidavit (H-1, pp. 26-27). Hunter further testified that at no time did he make any promise to the petitioner, and that he neither threatened him in any way, nor subjected him to physical abuse of any sort (H-1, p. 28).

At all points in the proceeding, petitioner continually responded that he had been fully advised of his rights, understood them, and had read his constitutional warning from the affidavit before subscribing it (H-1, pp. 58-59).

Petitioner further testified:

(1) That he had been advised of his rights before talking to Sergeant Hunter, that he indicated that he understood them, that he was asked if he wanted an attorney present, that he would speak to Sergeant Hunter without an attorney being present (H-1, pp. 60-61);

(2) that he was told he was a suspect in a homicide case; that no promises of a reduced charge were made; that there was no discussion of any term of imprisonment

or any lighter sentence; that there were no threats of physical violence or injury; that he was not struck; that he was only questioned by Sergeant Hunter during this time (H-1, pp. 62-63);

(3) that the State Police had read his "Miranda rights" to him from a card (H-1, pp. 65-66);

(4) that the person he knew as the "Captain" advised him of his constitutional rights and he refused to speak with him and he left (H-1, pp. 73-74);

(5) that the "Captain" neither made any promises on a recommendation to a Judge or District Attorney, nor made any promises on a jail sentence if he co-operated (H-1, pp. 75-76);

(6) that he made no requests of the "Captain"; that he was not threatened by the "Captain" (H-1, p. 77);

(7) that he was not threatened in any way by the Police; that there weren't any specific promises made to him (H-1, p. 77).

Syracuse Police Captain Robert McCarthy testified that it was he who assigned Sergeant Hunter to interrogate petitioner; that neither he nor anyone else to his knowledge had spoken with petitioner, and in fact, he ordered that no one interrogate petitioner but Sergeant Hunter (H-2, pp. 7-8, 11-12, 14-16).

First Deputy Chief of Police, John C. Dillon, testified that prior to Sergeant Hunter's interrogation of the petitioner, he had spoken with him and asked him his name, age, background, military service, his whereabouts for the prior few days, whether he resided in the house where the murder victim was found, and his employment (H-3, p. 3). Dillon did not recall asking the petitioner any specific questions regarding his possible involvement in the victim's death and the petitioner did not make any specific request of him (H-3, pp. 4, 19), including any request for an attorney (H-3, p. 19).